

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DONALD HEIMSTAEDT and TODD KORTE,

Civil Action No.: 07 CIV 9389 (JSR)

Plaintiffs,

**REPLY AFFIRMATION OF
ARTHUR J. SEMETIS**

-against-

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT
SHARING PLAN, and XYZ TRUSTEES OF THE
MCQUAY NEW YORK, LLC 401(k) PROFIT
SHARING PLAN,

Defendants.

-----X
ARTHUR J. SEMETIS, an attorney duly admitted to practice law before the Courts of
the State of New York, hereby affirms under penalties of perjury that:

1. I am a member of Arthur J. Semetis, P.C., attorneys in this action for defendants
Prem.Air Group of New York LLC f/k/a McQuay New York LLC, Prem.Air Group, LLC,
George Koutsos i/n/a George Koutsos, Eric Berkowitz, Prem.Air NY 401(k) Profit Sharing Plan
f/k/a McQuay New York LLC 401(k) Profit Sharing Plan i/n/a McQuay New York Profit
Sharing Plan, and XYZ Trustees of the Prem.Air NY 401(k) Profit Sharing Plan f/k/a McQuay
New York, LLC 401(k) Profit Sharing Plan.

2. I submit this affirmation in further support of the motion pursuant to the Fed.
Rules Civ. Proc. 12 (b)(6) and (9)(b) which seeks the following relief:

(i) Defendant Prem.Air Group LLC seeks dismissal of the Fourth Count of
the First Amended Complaint sounding in breach of contract on the grounds that it was not a

party to the oral contracts that are the subject to the Complaint since it was not legally formed until May 21, 2006, and that neither plaintiff was ever employed by this separate limited liability company;

(ii) Defendants Prem.Air Group of New York LLC (f/k/a McQuay New York LLC), Prem.Air Group LLC, George Koutsos and Eric Berkowitz seek dismissal of the Fifth Count of the First Amended Complaint sounding in Fraud and Misrepresentation for failure to satisfy the pleading requirements of Fed. R. Civ. P. 9(b);

(iii) Defendant Prem.Air Group of New York LLC (f/k/a McQuay New York LLC), Prem.Air Group LLC, George Koutsos and Eric Berkowitz seek dismissal of the Sixth and Seventh Counts of the First Amended Complaint sounding in Quantum Meruit and Unjust Enrichment based upon the unavailability of this relief in an action based upon contract; and

(iv) Defendants George Koutsos and Eric Berkowitz also seek dismissal of the Eighth Count of the First Amended Complaint seeking to Pierce the Corporate Veil for plaintiffs' failure to adequately plead the requisite elements of the same in their Complaint.

Prem.Air Group LLC

3. Plaintiffs do not deny the fact that they were never employed by Prem.Air Group LLC, that they placed no orders through Prem.Air Group LLC, and that they received no payments or tax statements from Prem.Air Group LLC.

4. As set forth in the annexed Koutsos Aff., and the affidavit of Joseph Salvator, CPA, the accountant for both Prem.Air Group of New York LLC, and Prem.Air Group LLC since its organization on May 31, 2006, Prem.Air Group LLC has had no sales or revenues, and its has not transacted any business. Importantly, the plaintiffs have not and cannot alleged otherwise.

Prem.Air New York LLC

5. As set forth in the annexed affidavit of George Koutsos, the Managing Member of Prem.Air Group of New York LLC, ("Koutsos Aff."), the entity known as Prem.Air New York LLC does not exist. Plaintiffs' repeated claims that such an entity exists exemplifies their willingness to make baseless statement in support of their claims.

6. The plaintiffs have submitted one letter dated April 2, 2007 as their sole justification to continue with their action against this non-existing entity.

7. The annexed Koutsos Aff. makes clear that the use of Prem.Air New York LLC in the body of the one letter was a typographical error. The letter is properly executed by George Koutsos as the President of Prem.Air Group of New York LLC, and Mr. Heinstaedt was thereby terminated from his employment with Prem.Air Group of New York LLC.

The Corporate Veil Should Not Be Disregarded

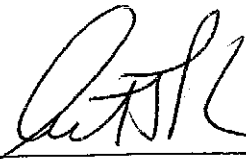
8. In their attempt to make a claim to disregard the corporate veil, the plaintiffs rely on unsubstantiated hearsay and false statements.

9. One such false statement is that a Con Edison payment was diverted to George Koutsos' personal account. The Koutsos' Aff. makes clear the falsity of this claim by producing a copy of the check and deposit ticket reflecting the deposit into the McQuay New York LLC account.

10. As set forth in the annexed Koutsos Aff., all payments by Prem.Air Group of New York LLC were properly made. Moreover, as set forth in the annexed Koutsos Aff. Prem. Air Group of New York LLC is a viable company which has just been awarded a \$20 million contract to supply air conditioning equipment to the Freedom Tower at the World Trade Center site.

11. For these reasons, the relief requested in the Notice of Motion dated February 21, 2008 should be granted in its entirety.

Dated: New York, New York
March 13 2008



Arthur J. Semetis

asdoc:\p\prem.air-heimstadt-korte.replyaffirm